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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

FAIRFIELD SENTRY LIMITED, et al.,

Debtors in Foreign Proceedings.

FAIRFIELD SENTRY LIMITED, et al. (In Liquidation),
acting by and through the Foreign Representatives thereof,

Plaintiffs,

v.

THEODOOR GGC AMSTERDAM, et al.,

Defendants.

FAIRFIELD SENTRY LIMITED (IN LIQUIDATION) and
FAIRFIELD SIGMA LIMITED (IN LIQUIDATION),
acting by and through the Foreign Representatives thereof,
and KENNETH KRYS and CHARLOTTE CAULFIELD,
solely in their capacities as Foreign Representatives and
Liquidators thereof,

Plaintiffs,

-against-

ABN AMRO SCHWEIZ AG a/k/a ABN AMRO
(SWITZERLAND) AG, et al.,

Defendants.

Chapter 15 Case

Case No. 10-13164 (BRL)

(Jointly Administered)

Adv. Pro. No. 10-03496

(Administratively Consolidated)

Adv. Pro. No. 10-03635 (SMB)

**DEFENDANTS UBS AG
AND UBS
JERSEY NOMINEES'
NOTICE OF JOINDER IN
CONSOLIDATED
BRIEFING AND
INDIVIDUAL
SUPPLEMENTAL BRIEF
IN OPPOSITION TO
PLAINTIFFS' MOTION
FOR LEAVE TO AMEND
AND IN SUPPORT OF
MOTION TO DISMISS**

In accordance with the October 18, 2016 Supplemental Case Management Order and October 20, 2016 Second Supplemental Case Management Order entered by this Court (ECF Document No. 918 in Adversary Proceeding No. 10-03496, with which this adversary proceeding has been administratively consolidated), Defendants UBS AG (incorrectly sued herein as “UBS AG New York” and “UBS AG Zurich”) and UBS Jersey Nominees (together with UBS AG, “UBS”) respectfully submit this (1) notice of joinder in the motion documents identified below, and (2) Individual Supplemental Brief in opposition to Plaintiffs’ motion for leave to file a Fourth Amended Complaint and in support of their motion to dismiss.

I. UBS’S JOINDER IN CONSOLIDATED AND JOINT BRIEFING

UBS hereby joins in the Motion to Dismiss filed on January 13, 2017, as ECF Document No. 959 in Adversary Proceeding No. 10-03496, and incorporates the documents submitted in support thereof (including the Consolidated Motion to Dismiss Brief (except for the arguments set forth in Section I.B.2 thereof), the Declaration of Thomas J. Moloney (and Exhibits thereto), the Declaration of Simon Mortimore, QC (and Exhibits thereto), and the Declaration of Phillip Kite (and Exhibits thereto), filed on January 13, 2017 as ECF Documents Nos. 960, 961, 962, and 963 in Adversary Proceeding No. 10-03496).

UBS further joins in the Motion to Dismiss on *Forum Non Conveniens* Grounds filed on January 27, 2017, as ECF Document No. 1107 in Adversary Proceeding No. 10-03496, and incorporates the documents submitted in support thereof (including the Supplemental Memorandum of Law (and Exhibits thereto) and Declaration of Phillip Kite (and Exhibit thereto) filed on January 27, 2017 as ECF Documents Nos. 1109 and 1111 in Adversary Proceeding No. 10-03496).

UBS additionally joins in the Motion to Dismiss Based on the Doctrine of *Res Judicata* filed on January 27, 2017, as ECF Document No. 1131 in Adversary Proceeding No. 10-03496,

and incorporates the documents submitted in support thereof (including the Supplemental Memorandum in Support (and appendices thereto) filed on January 27, 2017, as ECF Document No. 1133 in Adversary Proceeding No. 10-03496).

II. PLAINTIFFS CANNOT ESTABLISH PERSONAL JURISDICTION OVER UBS

As set forth in the Consolidated Motion to Dismiss Brief (at 23-35), Plaintiffs fail to establish that either UBS AG or UBS Jersey Nominees is subject to personal jurisdiction in this Court in connection with any of Plaintiffs' claims. UBS wishes to clarify one point relevant to that conclusion. Specifically, although Plaintiffs allege that "UBS AG New York" is "a corporate entity organized under the laws of New York," Proposed Fourth Am. Compl. ¶ 30, there is no such legal entity as "UBS AG New York"; rather, the relevant entity is simply called UBS AG, and at all times relevant to this action, UBS AG has been organized as an "Aktiengesellschaft" (a form of corporation) under the laws of Switzerland, with "its principal place of business . . . located in Switzerland." January 26, 2017 Declaration of Raimund Roehrich ("Roehrich Decl.") ¶¶ 3-5.¹ Thus, Plaintiffs cannot subject UBS AG to general jurisdiction in this Court. *See, e.g., Daimler AG v. Bauman*, 134 S. Ct. 746, 760-61 (2015); *AM Trust v. UBS AG*, 78 F. Supp. 3d 977, 985 (N.D. Cal. 2015), *appeal filed* 15-15343 (Feb. 25, 2015); *Giordano v. UBS, AG*, 134 F. Supp. 3d 697, 707 (S.D.N.Y. 2015); *Ace Decade Holdings Ltd. v. UBS AG*, Index No. 653316/2015, 2016 WL 7158077, at *5 (N.Y. Sup. Ct. Dec. 8, 2016).

¹ Nor is there any separate legal entity known as "UBS AG Zurich." Roehrich Decl. ¶¶ 3, 6.

CONCLUSION

For all of the foregoing reasons, Plaintiffs' motion for leave to file a Fourth Amended Complaint should be denied and this action should be dismissed in its entirety with prejudice.

Dated: New York, New York
January 27, 2017

Respectfully submitted,

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